IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 48 of 2007
With
COMPANY APPLICATION No. 49 of 2007
With
COMPANY APPLICATION No. 50 of 2007
With
COMPANY APPLICATION No. 51 of 2007
With
COMPANY APPLICATION No. 52 of 2007
With
COMPANY APPLICATION No. 53 of 2007
With
COMPANY APPLICATION No. 54 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RHINO GROUP INCORPORATION - Applicant(s)
Versus
O.L. OF M/S. WINDSOR FOODS PVT. LTD. - Respondent(s)

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Appearance :
MR AR GUPTA for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 02/02/2007

COMMON ORAL JUDGMENT

1. All these Judge's Summons have been taken out by the respective applicants being unsecured creditors of the company in liquidation – M/s. Windsor Foods Private Limited for an appropriate order directing the Official Liquidator of M/s. Windsor Foods Private Limited to pay the amount due and payable to them as according to the applicants, after making necessary payment to all the secured creditors as required under Section 529 (A) of the Companies Act, 1956 and meeting with all the expenses, the Official Liquidator is still having a surplus fund, which is required to be disbursed amongst the unsecured creditors.

2. Shri Hiren Modi, learned advocate appearing for the Official Liquidator has filed Official Liquidator Report in Company Application No. 54 of 2007 pointing out the latest position of the fund available with the Official Liquidator after making necessary payment to the secured creditors, etc.

3. It is submitted in the report that at present, the Official Liquidator is having a fund of Rs. 3,03,43,994/- as on December – 2006. It is submitted that as on today there are 9 unsecured creditors and the admitted amount due and payable to all the 9 unsecured creditors comes to Rs.27,72,335/-. The list of unsecured creditors and their claims have been narrated at page No.12 to the said Official Liquidator Report. It is submitted that there are dues of the Income Tax Department, which are disputed and the matter is pending before the appellate tribunal. It is also further submitted that over and above the above stated 9 unsecured creditors, there are other 2 claims i.e. one is of Lunkar Enterprise, Chennai and another is of M/s. Kamani Oil Industries for an amount of Rs.12,79,594/- and 20,551/- respectively. It is submitted that so far as claim of Lunkar Enterprise, Chennai of Rs.12,79,594/- is concerned, the matter is pending before the High Court of Chennai and there is a stay in favour of the company in liquidation. It is also

further submitted that over and above the claims of above 11 unsecured creditors, the Official Liquidator has also received the claims of 2 shareholders (contributories) and their claims comes to Rs.32,72,200/-. Therefore, it is submitted that even after setting aside the claims of Lunkar Enterprise, Chennai, M/s. Kamani Oil Industries and the Income Tax Department (which is approximately of Rs.40 Lacs), from the balance amount, the unsecured creditors and even the claims of the shareholders (contributories) can be considered. It is also further submitted that before making any payment to the contributories, the Official Liquidator has to pay interest to the unsecured creditors at the rate of 4% as per Rule 179 of the Companies (Court) Rule; 1959, which comes to Rs.39,172/-. Thus, it is submitted that so far as the claims of the unsecured creditors (admitted) and claims of shareholders (contributories) are concerned, the total amount comes to Rs.60,83,707/-. It is further submitted that still the Official Liquidator will have surplus amount even after making the payment of Rs.60,83,707/-. It is also further submitted

that the Official Liquidator is also required to deduct Central Government fees under Rule 291 of the Companies (Courts) Rule 1959 on distribution of dividend to the unsecured creditors and contributories.

4. Having heard the learned advocates appearing for the respective parties and having gone through the report submitted by the Official Liquidator dated 1st February, 2007 and considering the latest fund position of the company in liquidation as on December – 2006, which is of Rs.3,03,43,994/-, the Official Liquidator is directed to make the payment to the 9 unsecured creditors, whose names have been mentioned at Page – 15 to the report dated 1st February, 2007 and to make the payment as per the amount mentioned against the names of each unsecured creditor, total of which comes to Rs.27,72,335/- within a period of 4 weeks from today by an Account Payee Cheque. The Official Liquidator is also directed to pay the interest to the unsecured creditor at 4% p.a. as per Rule 179 of the Companies (Court) Rule 1959, which comes to

Rs.39,172/- as per para – 11 of the report dated 1st February, 2007. The Official Liquidator to set apart the disputed amount/claims of Income Tax Department, Lunkar Enterprises, Chennai and M/s. Kamani Oil Industries, which approximately comes to Rs.40 Lacs. The Official Liquidator is also directed to make the payment to the shareholders / contributories, which comes to Rs. 32,72,200/- after deducting the Central Government fees under Rule 291 of the Companies (Court) Rule, 1959 on distribution of the dividend to the unsecured creditors and contributories. It is reported that so far as Company Application No. 49 of 2007 is concerned, the original unsecured creditor – Shri M.C.Desai has expired and the said application is by the legal heirs and representatives of the deceased Shri M.C.Desai. It is submitted that the present application has been filed and signed by all the legal heirs of the deceased Shri M.C.Desai. Shri Gupta, learned advocate appearing for the applicant of Company Application No. 49 of 2007 has submitted that the Official Liquidator be requested / directed to issue a cheque in the name of Shri Deven Mahendra Desai, which is

agreeable to all the legal heirs and representatives of the deceased Shri M.C.Desai. Accordingly, the Official Liquidator is directed to issue cheque in the name of Shri Deven Mahendra Desai towards the claim of deceased Shri M.C.Desai. The aforesaid entire exercise to be completed within a period of 4 weeks from today.

5. With these all these applications are disposed of.

[M.R.Shah, J.]

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